REDD in India

An Independent Monitoring Report by Equations

India covers 2.5% of the world's geographical area and is home to 1.8% of the world's forests. India also supports 17% of the world's human population and 18% of its livestock population. The Indian forests are home to around 100 million people and provide sustenance to them.

India is rich in flora and fauna with more than 45,500 flowering plants and 91,000 animal species found in 16 major forest types. India's forests meet nearly 40% of the country's energy needs and 30% of its fodder needs.[58]

According to the State of Forest Report 2005 published by the Forest Survey of India[59], the recorded forest area in the country is 769,626 km^2 (or 23.41% of the country's geographic area). Of this, 419,028 km^2 is Reserved Forest (54.4% of the total forest area), 216,605 km^2 is Protected Forest (28.14%) and 133,993 km^2 is Unclassed Forest (17.4%).

Reserved Forest is an area notified under the provisions of either the India Forest Act (1927) or the State Forest Acts, and has full protection. In a Reserved Forest all activities are prohibited unless they have been explicitly permitted. Protected Forest is also notified under the provisions of the same Acts, but the degree of protection is more limited: in Protected Forests all activities are permitted unless prohibited.

Unclassed Forest is an area recorded as forest but not included in any other forest category. Unclassed forests are actually outside the control and management of the forest departments and primarily belong to communities and individuals.

According to the Ministry of Environment and Forests, in 1999, around 31 million ha of Indian forests were degraded.

The total forest cover of the country as per the 2005 assessment is 677,088 km^2 and this constitutes 20.6% of the geographic area of the country.[60] Of this, 54,569 km^2 (1.66%) is very dense forest, 332,647 km^2 (10.12%) is moderately dense forest, and 289,872 km^2 (8.82%) is open forest cover. Madhya Pradesh with 76,013 km^2 has the maximum area under forest cover, followed by Arunachal Pradesh (67,777 km^2) and Chhattisgarh (55,863 km^2). In terms of the actual proportion of a state under forest cover, Mizoram has the maximum percentage (88.63%). It is followed by Nagaland (82.75%), and Arunachal Pradesh (80.93%).

Precursors to forest governance in India

Prior to the advent of the East India Company and the subsequent establishment of the British Colony in India, there was no formal forest policy. Various princely states had different approaches to managing the forestry resources available in their areas.

British rule, though, brought with it 'scientific' forest management, with a narrow agenda focused on sustained commercial timber production. This favored a few commercially valuable species to the exclusion of all else, thereby providing regular profits to the colonial empire. However, this management practice, spurred by the economic interests of the age, was based largely on conjecture and blindly copied European production-based forestry models.

The basic colonial approach was to declare forests as state property and curtail the rights of the forest dwellers to areas with commercially valuable species. Clear-felling of vast tracts of forest was the favored method of 'forest operations', followed by complete closure to grazing and other human activities, such as the collection of firewood, fodder, medicinal plants, bamboo, etc. The Forest

[58] India's Fourth National Report to the Convention on Biological Diversity, Ministry of Environment and Forests, Government of India, 2009
[59] State of Forest Report 2005, Ministry of Environment and Forests, India, 2005, http://www.fsi.nic.in/sfr_2005.htm
[60] ibid

Department (FD) was created in 1864 to oversee these operations. This assertion of state monopoly right and the exclusion of forest communities, a process by which the British gradually appropriated forest resources for revenue generation, thus shaped the organizing principles of forest administration in modern India.

Towards the end of the 19th century, almost 80% of the forests was owned by communities and private individuals. Today, state ownership has increased to more than 80% of the recorded forest area.

Indian forest policies and their implications

The objective of the first Indian Forest Policy in the colonial period (adopted in 1894) was to manage state forests for the public benefit. It viewed forests as potential sources for generating profits, although it did stress the need to preserve forests in hilly regions and to treat income generation as a secondary priority if local needs conflicted with their management of forests as revenue-earning properties.

This policy marked a significant shift in consolidating the state's property rights regime over forests. The forest communities were not only denied their traditional rights and privileges but were given no role in preserving and managing India's forests. It marked the beginning of the process of marginalization of these people.

The Permanent Settlement of 1757 and the 1894 forest policy resulted in rebellions and revolts of the forest and Indigenous tribal communities that started in 1784 and continued until the first quarter of the 20th century. They were primarily directed against the new land and forest policies of the British. But the British crushed them ruthlessly, bringing fresh areas under their control and formulating new legislation to legitimize the transfer of property rights from the community/individual to the state. The Forests Acts of 1878 and 1927 and the forest policy of 1894 facilitated the strengthening of this new order.



Degraded open forest in the tribal heartland of Chhattisgarh in central India. Photo: Souparna Lahiri

Chronology of forest policies and legislation in India

British Colonial Period

- The Indian Forest Act, 1865
- The Indian Forest Act, 1878 (modified)
- The Indian Forest Policy, 1894
- The Indian Forest Act, 1927 (amended and modified)

Independent India

- National Forest Policy, 1952
- Wild Life Protection Act, 1972
- National Commission on Agriculture, 1976
- Forest Conservation Act, 1980
- National Forest Policy, 1988
- Joint Forest Management Circular, 1990
- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

Following independence, India's Forest Policy Resolution of 1952 and the 1976 National Commission on Agriculture (NCA) report also stressed the importance of production forestry and achieving self-sufficiency in the supply of wood products from the nation's forests. The 1952 policy also called for the protection of wildlife and the preservation of fauna by demarcating forests for sanctuaries and national parks.

The 1988 Forest Policy, however, departed from these economic priorities by treating forests first and foremost as an ecological necessity; then as a source of goods for use by the local populations, with particular emphasis on Non Timber Forest Produce (NTFP); and finally as a source of wood and other products for industry. It also set a target of increasing forest cover to 33% of India's land area. Additionally, it advocated that this area be increased to two-thirds in the hills to prevent erosion and land degradation and to ensure the stability of these fragile ecosystems.

The NCA recommendations flowed directly from the increasing threats to existing forests. They recognized the protective and aesthetic functions of forests, regulation of grazing and shifting cultivation, and the domestic needs of the people for various forest products, such as fuel wood and fodder.[61] Thus, the NCA advocated a social forestry model involving industrial plantations on degraded forests lands and non-forest lands to meet the growing domestic demand for forest products and the fuel wood and fodder of local communities. Social forestry was seen as a way to reduce pressure on natural forests and the dependence of forest communities on those forests.

The basic objectives of the 1988 Forest Policy were:

- Maintaining environmental stability through preservation and restoration of the ecological balance.
- Conserving the country's natural heritage by preserving its remaining natural forests.
- Checking soil erosion and denudation in water catchment areas.
- Checking the proliferation of sand dunes.
- Increasing forest/tree cover through afforestation and social forestry programs on denuded, degraded and unproductive lands.
- Meeting the requirements of rural and tribal populations for fuel wood, fodder, minor forest produce and small timber.
- Increasing the productivity of forests to meet essential national needs.
- Encouraging efficient utilization of forest produce and maximizing substitution of wood.
- Creating a massive people's movement, with the involvement of women, to achieve these objectives and minimize pressure on existing forests.

The 1988 policy also paved the way for the implementation of Joint Forest Management (JFM). The program was promoted by a Government of India circular to all states and union territories giving guidelines for the "involvement of village communities and voluntary agencies in the regeneration of degraded forests." This document, for the first time, specified the rights local communities have over forest lands, giving the protectors usufructs such as grasses, NTFPs, and a portion of the proceeds (ranging from 20-100%) from the sale of trees when they mature.

Forest legislation, conservation and forest-dependent communities' rights

The first Colonial Forest Act was drafted in 1865, primarily for the colonial government to declare forests as state property, and carry out 'scientific forestry' to gradually replace existing mixed forests with monocultures of commercially valuable species. That 1865 Act was modified in 1878, as the colonial establishment found that people's rights were interfering with the clear felling of commercially valuable forests. The provisions were found to be too friendly to the traditional rights of forest people and not stringent enough in curtailing them. This was the reason underlying the division of forests into Reserved Forests (RF), Protected Forests (PF) and Village Forests (VF). The 1878 Act enabled the government to severely curtail traditional rights (called concessions in the Act) in the first two categories, on the basis that the Village Forests would meet the basic needs of village communities.

[61] Report of the National Commission on Agriculture: Forestry, Volume IX, New Delhi, Ministry of Agriculture and Irrigation, Government of India, 1976

The Indian Forest Act of 1927,[62] the legislative foundation of the forest sector in independent India, was derived from that Colonial 1878 Act. Since independence, several states have enacted their own legislation, while others have amended the Act to suit local needs. Critically, the Act gave state governments the power to divert forest land for other uses. Although the 1952 policy criticized this clause, it did not change the law, leading to millions of hectares of forest land being diverted between 1951 and 1980. During this time period, 4.3 million ha of forests were lost.[63] The 1927 Forest Act does not support people's participation in forest protection and management, and it does not promote social forestry either.

The **Wildlife (Protection) Act 1972 (WLPA)[64]** is also relevant to the rights of forest-dependent communities, even though it differs significantly from the Forest Act in that it gives primacy to conservation over exploitation. The objectives of WLPA have been used to justify curtailing the legitimate daily survival activities of forest-dependent people in wildlife habitats, evicting them forcibly and without proper resettlement, and centralizing the management of these habitats in the hands of a callous and unresponsive bureaucracy. It created the two major types of protected areas we see today: National Parks (NPs) and Wildlife Sanctuaries (WLS). Its blanket ban on all human activities, except tourism, is causing considerable suffering among the thousands of local people, who have been deprived access to the forests they depend on for their sustenance and survival, leading to conflicts between them and the Protected Areas (PA) authorities, together with a sharp decline in public support for conservation. To further complicate matters, however, WLPA has not been effective in fending off the pressure of commercial and industrial interests. In effect, the Wildlife Protection Act (WLPA) of 1972 criminalized forest people and took away their traditional Non-Timber Forest Products and fishing rights in protected forests, while poaching continued unabated.

There are 96 National Parks and 509 Wildlife Sanctuaries, covering 15.7 million ha, which is about 4.78% of the geographical area of the country. About 20% of India's forests fall within the Protected Areas network.

The **Forest Conservation Act (FCA) of 1980[65]** was the first legislative attempt to slow deforestation by controlling government behavior. It limited the power of state governments to de-reserve Reserved Forests or divert forest lands for non-forest purposes without the permission of the central government. The Act also required state governments wanting to divert forest land for non-forest uses to identify an area of non-forest land of at least equal size for compensatory afforestation. In addition, a charge was levied. The Ministry of Environment and Forests (MoEF) was created in 1984, to monitor state compliance with the provisions of the legislation.

This legislation has also caused and continues to cause immense deprivation and suffering to millions of forest people across the country. Villages are routinely denied basic amenities like roads and water supply pipelines. Forest and Taungya (forest workers') villages are denied schools and health centers as well. Yet large parts of protected NPs and WLS still get de-notified regularly for destructive activities like mining, quarrying and building of large dams.

The threat of eviction had loomed large over the forest people of this country ever since the promulgation of the 1972 WLPA and the 1980 FCA. The Supreme Court of India passed several interim orders to clear encroachment of forest lands. The November 2001 MoEF order acts as the basis of the most draconian government orders of recent times. This order directs state governments and union territories to summarily evict all encroachers from forest land. Because the Court and MoEF define all land under the Forest Departments as 'forest land', irrespective of the actual use of those lands, the government order can be (and is being) used to evict even traditional settlements in forest areas. As a result, the Forest Conservation Act of 1980 has rendered more than 20 million forest people as encroachers, even though it has not stopped the massive deforestation and diversion of forests resources to industry.

[62] available at http://moef.nic.in/index.php
[63] India's Forests, Forest Research Institute, Government of India, Dehradun, 1984
[64] available at http://moef.nic.in/index.php
[65] available at http://moef.nic.in/index.php

A **Joint Forest Management (JFM) circular** recommending 'involvement of village communities and voluntary agencies in the regeneration of degraded forest lands' was issued on 1 June 1990, by the MoEF. It was merely a government order with no force of the law behind it, but most states have passed resolutions to introduce JFM and comply with the order because they were also faced with threats of curtailment of centrally-sponsored schemes. JFM has had some impacts in situations where state control had already completely eroded traditions of community forest management. However, in areas where traditional forest management practices still exist (like the north-eastern states, Madhya Pradesh, Chattisgarh, Jharkhand, Orissa and Uttaranchal), JFM is undermining and commercializing traditional systems and bringing community-protected forests under the control of the forest department.

JFM was essentially imposed on the forest dwellers without appropriate consultation at any stage of its planning and implementation. It has also led to the marginalization and displacement of tribals and the violation of their customary and traditional rights: the defining feature of its implementation has been its policy of evicting 'forest encroachers', which has led to many forest dwellers losing their lands and access to forest resources. There were 56 JFM project-related police firings in Madhya Pradesh during the five-year JFM period under the World Bank Forestry Project, some of which resulted in the death of tribals.[66] In 1997, for example, two tribal villagers were killed by the armed forces in Mandla and Dahinala when they tried to defend their crops.

The Public Hearing on Forest Rights held in Harda district of Madhya Pradesh in 2001, whose panel comprised eminent academics Dr Nandini Sundar and Madhu Sarin and journalist Rakesh Diwan, highlighted the manipulative and threatening tactics employed by the forest department to extract money, food and *begar* (a form of bonded labor, where tribal women are obliged to cook, clean and wash for the village forest officers). These, among many other documented grievances, led organizations like the Adivasi Mukti Sangathan (Sendhwa), Shramik Adivasi Sangathan, Jana Sangharsh Morcha and Bharat Jan Andolan to develop large-scale opposition to JFM and the Forestry project.

As a reaction to this opposition, the World Bank established a Joint Review Mission in 1999 to evaluate the claims made by the Mass Tribal Organisations (MTOs). The Mission, formed by representatives of the World Bank, the Madhya Pradesh (MP) Forest Department and the MP Mass Tribal Organisations, investigated the impact JFM had had on Adivasi communities in the state through field visits and interviews. Throughout the process, consensus between the three participant groups was reached for every statement made for the report. The report found that amongst other negative elements of the project[67]:

- There was little to no participation of forest-dependent communities in the planning, implementation or evaluation of the JFM project;
- The customary rights of forest dwellers were denied; and
- The livelihoods of the forest dwellers had been threatened by the project.

On the eve of the publication of the report, the Madhya Pradesh Forest Department pulled out, in an effort to de-legitimize the whole process. The Bank then followed suit, abandoning the Joint Mission. The Mass Tribal Organisations in Madhya Pradesh published the report unilaterally in May 1999, and have since been awaiting the promised formal response to the report from the Bank. The mass demonstrations held both locally at Forest Department offices in 1999 and in New Delhi at the World Bank's offices in 1999 and 2000 to obtain this response have been to no avail.

The Forest Rights Act

The Forest Rights Act (2006), however, marked a real watershed in the history of forest communities' struggle in India. For the first time, the Government of India through the **Scheduled Tribes and the Other Traditional Forest Dwellers (Recognition of Forest Rights), Act (2006)** admitted that "forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State

[66] Village Forest Protection Committees in Madhya Pradesh: an update and critical evaluation, Emily Caruso, Anurag Modi, Forest Peoples Programme, 2004
[67] a summary of the Joint Mission's findings can be found in the document cited above in footnote 9.

Forests during the colonial period as well as in independent India resulting in historical injustice to the Scheduled Tribes and other traditional forest dwellers who are integral to the very survival sustainability of the forest ecosystem."[68]

After a prolonged struggle in the wake of forest communities being evicted as encroachers as per the WLPA 1972 and FCA 1980, and heated debate in the Indian Parliament, this Act was passed to recognize and vest the forest rights and occupation of forest land in forest-dwelling scheduled tribes and other traditional forest dwellers, who have been residing in such forests for generations but whose rights could not be recorded.

The significant provisions of the 2006 Forest Rights Act are that it provides:

- Tenurial security and access rights to forest dwellers.
- The right to hold and live in forest land under individual or common occupation for habitation or for self-cultivation for livelihood.
- The right of ownership access to collect, use and dispose of minor forest produce that has been traditionally collected within or outside village boundaries.
- Other community rights of uses or entitlements such as fish and other products of water bodies, grazing and other traditional resources accessed by nomadic or pastoralist communities.
- Rights of settlement and the conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests (whether recorded, notified, or not) into revenue villages.
- The right to protect, regenerate, conserve or manage any community forest resource that they have been traditionally protecting or conserving for sustainable use.
- The right of access to biodiversity and community rights to intellectual property and traditional knowledge related to biodiversity and cultural diversity.

This Act empowers the Gram Sabha[69] (the traditional village assembly) to play the pivotal role in ensuring the rights of forest dwellers, decision-making, planning and management. The functioning of the Gram Sabha is vested with the village-level Forest Rights Committee (FRC).

According to the Act, forest rights recognized in critical wildlife habitats in National Parks and Wildlife Sanctuaries are violated unless it is clearly established that co-existence is not possible and there is no other alternative. The free and informed consent of the Gram Sabha will also be necessary in relation to any resettlement and other consequences.

The forest rights to land under actual occupation will be restricted to an area not exceeding four hectares, and is heritable, and inalienable. Such rights shall be registered jointly in the name of both the spouses in case of married persons and in the name of a single person in case of a household headed by a single person, and in the absence of a direct heir, the right shall pass on to the next-of-kin.

The Act overrides any other forest act in terms of implementation and interpretation. The Forest Rights Act is a step in the right direction not only in passing age-old rights back to the forest communities, but also for protecting, conserving and ensuring the sustainable use of the forests and its ecosystem. However, even though it was passed in December 2006, implementation has so far been very poor, primarily due to covert opposition from the Forest Department which does not want to share its absolute power with the forest communities and still regards itself as the biggest landlord in the country. Officials of the Forest Department together with the wildlife lobby have been creating umpteen obstacles to this Act from the very first day. This is the reason why the FD still recognizes the Joint Forest Management Committees – the FPCs in their official documents and reports, instead of Forest Rights Committees as per the Forest Rights Act 2006.

[68] Available at http://tribal.gov.in
[69] Gram Sabha is a traditional village council/assembly, where the council is constituted of every adult villager with equal voting rights including women.

Rights of Indigenous People and UN Declaration on Rights of Indigenous Peoples

The working definition of Indigenous communities and peoples arrived at by the UN Secretariat of the Permanent Forum on Indigenous Issues reads:

> "Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.
>
> "This historical continuity may consist of the continuation, for an extended period reaching into the present of one or more of the following factors:
> a) Occupation of ancestral lands, or at least of part of them;
> b) Common ancestry with the original occupants of these lands;
> c) Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.);
> d) Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);
> e) Residence on certain parts of the country, or in certain regions of the world;
> f) Other relevant factors."[70]

However, the Government of India and its administrative authorities do not recognize or use the term Indigenous. Instead, the Indigenous and/or tribal communities in India are recognized through provisions of Article 366 and 342 of the Indian Constitution under a special category referred to as "scheduled tribes". This defines them as "such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes."
The criteria used to specify a community as a scheduled tribe include indications of primitive traits, distinctive culture, geographical isolation, shyness of contact with the community at large, and backwardness. These criteria are not spelt out in the Constitution itself but have become well established in practice. They subsume the definitions contained in the 1931 Census, the reports of the first Backward Classes Commission 1955 and the Advisory Committee on Revision of SC/ST lists (Lokur Committee),

The total population of Scheduled Tribes was 84,326,240 according to the Census in 2001, which accounts for 8.2% of the total population of country.

However, within civil society groups in India, tribal groups, experts and academics, the categorization of certain tribal communities as scheduled tribes is controversial. The grouping of 'scheduled tribes' does not include all the tribal communities in India and the criteria used for scheduling is not without debate. In the north eastern part of the country the terms 'tribal' and 'indigenous communities' are mostly used, whereas in the rest of the country such communities are referred to as 'Adivasis'.

[70] The Concept of Indigenous Peoples, background paper prepared by the Secretariat of the Permanent Forum on Indigenous Issue, New York, 2004

India and the definition of Indigenous Peoples

In United Nations negotiations over the years, India has consistently refused to recognize the tribal communities as Indigenous Peoples, even though India voted in favor of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the UN General Assembly of September 2007. In relation to UNDRIP, Indian Representative Ajai Malhotra said his country had consistently favored the promotion and protection of Indigenous Peoples' rights: the fact that the working group had been unable to reach consensus was only reflective of the extreme complexity of the issues involved. While the Declaration did not define what constituted Indigenous Peoples, the issue of Indigenous rights effectively pertains to peoples in independent countries who were regarded as Indigenous on account of their descent from the populations which inhabited the country, or a geographical region which the country belonged to at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retained some or all of their socio-economic, cultural and political institutions.

The Indian government's position on this contentious issue is further clarified by the statement of the then Chief Justice of Supreme Court, Y K Sabharwal while speaking in the International Law Association Conference (2006) in Toronto:

"Firstly, it is argued that it is not easy to identify indigenous peoples in India. For there have been continuous waves of movement of populations with different language, race, culture, religion going back centuries and millennia. Tribal communities have been a part of this historical process. In the circumstances the question arises as to how far back in history should one go to determine the identity of "indigenous peoples"? Whatever the nature of determination it is likely to be extremely arbitrary and controversial. Secondly, tribal and non-tribal peoples have lived in India in close proximity for over centuries leading to, as one author puts it 'much acculturation and even assimilation into the larger Hindu Society.' Thirdly, in the case of India some tribes are no longer tribes but have become, as the eminent sociologist Andre Betteile puts it, 'castes or something else'. Fourthly, tribal peoples in many cases may have settled in India long after some non-tribal peoples in other parts of India. Finally, attention has been drawn to the serious national sovereignty issues involved revolving around question of "self-determination" and ownership of lands."

Justice Sabharwal further said, "It may not be fair to say that the claim of some countries like that of India are not correct. India is indicted, unjustifiably though, at times on the ground that it is resisting to accept the existence of indigenous peoples in its society. When one looks at it from the standpoint of a person other than Indian, it may appear that India's stand is not correct. But one who is familiar with the Indian scenario may agree with the Indian perception. India has a history of cultural assimilation even while we agree to some communities maintain their distinct identity within the nation. India always presented a unity in diversity and diverse cultural identity is no insignia of the existence of indigenous group.

"Indeed, India accepts the existence of different tribes within its larger system again not different from the main culture in terms of the core values. True to its tradition of cultural assimilation and spirit of accommodation the Indian constitution presents the picture of the larger system of permitting the smaller political systems of tribal populations to be part of the system to remain distinct culturally but to be part of the larger system politically with sufficient autonomy wherever necessary and possible. Schedules V and VI of the Constitution of India specifically make provision for safeguarding the interests of the tribal people in India located in what is called tribal areas."

While controversy still exists over the very notion of the scheduling of certain tribal groups, the criteria followed for such selective scheduling, and national sovereignty issues around the question of self-determination and the ownership of lands, are at the crux of India taking a position in complete contrast to the United Nation Declaration on the Rights of Indigenous Peoples (UNDRIP) within the country.

The majority of tribal groups and communities have long demanded political autonomy over decision-making and governance on issues related to them and in their areas, and recognition of their traditional and customary rights over their ancestral land and habitats. Strong public mobilization, tribal

movements and electoral politics resulted in the enactment of a separate Provisions of the Panchayat[71] (Extension to the Scheduled Areas[72]) Act (PESA) in 1996 which provides:

- Autonomy over customary law, social and religious practices and traditional management practices of community resources.
- A village community to manage its affairs in accordance with traditions and customs.
- A Gram Sabha to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.
- That the Gram Sabha should *approve* of the plans, programs and projects for social and economic development before they are taken up for implementation by the Panchayat at the village level.
- That the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects.
- For the recommendations of the Gram Sabha or the Panchayats at the appropriate level to be made mandatory prior to the granting of prospecting licenses or mining leases or concessions.

Panchayats at the appropriate level and the Gram Sabha are also specifically endowed with:

- The power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant.
- The ownership of minor forest produce.
- The power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe.

While the PESA Act did devolve some powers to the tribal village communities and councils in Scheduled Areas, the same Act does not expressly recognize the *sole* rights of the tribal village council or their traditional self governance institutions: it thus allows the 'Panchayats at appropriate level' to usurp these powers. Also PESA, the Land Acquisition Act, the Rehabilitation & Resettlement Policy, environmental decision-making processes and clearances for development projects in Scheduled Areas do not reflect the spirit of 'free and prior informed consent' as enshrined in UNDRIP. Moreover, provisions of PESA are restricted only to the communities living within Scheduled Areas.

Furthermore, the draft National Tribal Policy only addresses India's Scheduled Tribes: it does not represent other tribal and Indigenous communities or all adivasis in India.

The draft Tribal Policy says that, "There is a very strong symbiotic relationship between the STs and the forests and they have been at the forefront of the conservation regime. Due to faulty processes of declaring forests in the past, the rights of the tribals over their traditional land holdings in the forests have gradually been extinguished. Insecurity of tenure and fear of eviction from these lands has led the tribal communities to feel emotionally as well as physically alienated from forests and forest lands."[73]

Nevertheless, though the draft policy talks of mandatory consultation with the Gram Sabha and the Tribal Advisory Council, it is conspicuously silent on the issue of consent of the communities and the safeguard and protection of ancestral lands and sacred groves of the tribal population.

On the implementation of the PESA, the draft policy states "PESA requires the State Governments to change their existing laws, wherever these are inconsistent with the central legislation. In reality, however, in the decade since its passage, very little has happened. Many State Governments have passed laws or amended existing ones, but not fully in conformity with the Central law. The implementation of the law has been severely hampered by the reluctance of most State Governments to make laws and rules that conform to the spirit of the law. The non-empowerment of tribal

[71] A Panchayat is a constitutionally recognized elected body of self-governance at the lowest tier of the three tier self governance system in India. Panchayats enjoy some form of autonomy as per the 73rd and 74th Constitutional amendments.
[72] Scheduled Areas are constitutionally recognized scheduled tribes' majority areas with various forms of autonomy and formally categorized as Schedule V and Schedule VI areas.
[73] Available at http://tribal.gov.in

communities remains one of the most critical factors responsible for the less than desired outcomes in all the interventions, monetary or otherwise meant for their development."

India and the Convention on Biological Diversity

India's Fourth Report on the Convention on Biological Diversity was officially released in June 2009.

In what seems to be a new initiative 'Key Biodiversity Areas (KBAs)' have been established in the Western Ghats. The report states that, "India is committed to contributing towards achieving three objectives of the Convention on Biological Diversity (CBD), the 2010 target and the Strategic Plan. Strategies and plans for conservation and sustainable use of biological resources based on local knowledge systems and practices are ingrained in Indian ethos and are enshrined in the Constitution of India (Article 48A and Article 51 A(g)) in the form of environmental protection. In recent times, the major building blocks of policy frameworks, legislations and action plans that drive the country in achieving all the three objectives of the CBD include, among others, Biological Diversity Act (BDA), 2002, National Wildlife Action Plan (NWAP) (2002-2016), National Environment Policy (NEP) 2006, National Biodiversity Action Plan (NBAP), 2008 and National Action Plan on Climate Change (NAPCC), 2008."[74]

The policies, legislations and action plans cited above, are, however, not without controversies and severe criticisms.

While the Biological Diversity Act (2002) faced severe criticism from the communities and related NGOs, the processes resulting in NEP 2006 and NAPCC 2008 were also accused of being non-participatory and non-transparent. The MoEF also rejected the National Biodiversity State Action Plans developed and formulated by the rural communities, tribal groups and forest people in 2002, and no action was taken to implement the recommended action plans. In addition, the National Agriculture Policy (2000), National Seeds Policy (2002) and National Wildlife Action Plan, also mentioned in the Fourth Report, were drafted and finalized unilaterally without any meaningful and proper consultation with or the participation of stakeholder communities.

The Government of India claims the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (2006), the establishment of the Wildlife Control Bureau, the integration of biological diversity concerns into the Environment Impact Assessment Notification (EIA, 2006), the draft Coastal Management Zone Notification (2008) and the National Tiger Conservation Authority are all measures taken to strengthen implementation mechanisms in policy, legislative and administrative measures targeted at biodiversity conservation and management.

In reality, even after the Indian Parliament passed the Forest Rights Act in 2006 December, it took the Government one full year to notify the Act, primarily due to the opposition of the wildlife lobby, a section of MoEF bureaucrats and the strong Forest Department lobby.

Furthermore, there is nothing to indicate that legitimate biodiversity concerns have been integrated into the EIA Notification 2006. On the other hand, the NGOs, tribal groups and adivasi communities have accused the MoEF of diluting the earlier notification of 1994 to pave an easy way for the project developers to get their projects cleared. These groups have demanded scrapping of the EIA Notification 2006.

The draft Coastal Management Zone Notification is another government folly. This draft was surreptitiously introduced in an attempt to replace the earlier Coastal Zone Regulation Notification, at the behest of the strong real estate, tourism and infrastructure lobby, who want to free India's vast coastline of the fishing and other coastal communities, even though this would deprive them of their livelihood and traditional habitat. Amidst consistent protest from the fishing communities, the Government was forced to let the draft Notification lapse by the end of July 2009.

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[74] India's Fourth National Report to the Convention on Biological Diversity, Ministry of Environment and Forests, Government of India, 2009, available at http://moef.nic.in/index,php

There is really nothing to indicate that the Indian Government is genuinely keen to protect and conserve its rich forest biodiversity, except the steps and instruments that it has put on paper – which remain on paper only.

Consider the biodiversity rich states of Arunachal Pradesh, Sikkim, Uttarakhand and Himachal. More than 300 mega hydro projects, oil exploration, cement plants, chemical plants and extensive mining activities are proposed in these states, even though Sikkim and Arunachal Pradesh are part of the Indo-Myanmar Biodiversity Hotspot with hundreds and thousands of rare and endangered plant and animal species. Thousands of hectares of pristine forests are diverted for non-forest activities and destroyed, much subsequently replaced by monoculture plantations in the name of afforestation. Similarly, the forests and habitats of tribal communities are cleared and given to global mining and steel giants in the central Indian states of Madhya Pradesh, Chhattisgarh, Orissa and Andhra Pradesh.

India and REDD

India has championed the concept of 'Compensated Conservation' since negotiations in Nairobi, in 2006 (in particular through a workshop in Cairns,[75] and a Subsidiary Body for Scientific and Technological Advice (SBSTA) meeting in Bonn.[76]



Plantations on forest land along the highway - Chhattisgarh
Photo - Souparna Lahiri

At the 13th meeting of the Conference of the Parties (COP-13) to the UN Framework Convention on Climate Change (UNFCCC) negotiations in Bali, in December 2007, the Indian delegation claimed a breakthrough in putting forth India's concern with forest conservation as central to negotiations on Reducing Emissions from Deforestation and Forest Degradation (REDD). The Indian proposal on forest conservation and the sustainable management of forests, and incremental increases in forest cover, put forward as a policy approach to enhance carbon stocks, found place not only in the preamble but also in the operative part (paragraphs 3 and 7) of the COP's decision on REDD. Similarly, the COP decision on the Bali Action Plan contains references, *inter-alia*, to policy approaches and positive incentives relating to the role of conservation, the sustainable management of forests and the enhancement of forest carbon stocks.

India's focus on the importance of including the conservation of forests and sustainable forest management, and improvements in forest cover, in REDD received the usual support from Costa Rica, China, Panama, Malaysia, Gabon, Ghana and African countries amongst others. Collectively, they demanded:

- The inclusion of forest degradation, the conservation of forest and/or increase in forest cover in the REDD draft text.
- That REDD projects should be accounted for and conducted at the national and/or sub-national level.

India's two main approaches to REDD are 'compensated reduction' and 'compensated conservation' where it says that carbon is saved from reducing deforestation and degradation, and carbon is added through conservation, the sustainable management of forests and increases in forest cover (afforestation and reforestation). Both have to be compensated equally.

[75] Views from ICFRE, Dehradun, India (an Observer organization) to UN FCCC on REDD, India's Submission to Cairns SBSTA, 2007, www.icfre.gov.in
[76] REDD Negotiations: Case for HFLD Countries, Indian Council of Forestry Research and Education, 2009. This is a comprehensive document explaining Indian Government's approach to REDD from Montreal COP to Bonn, available at www.icfre.gov.in

India's arguments rest heavily on the claim that India is a low deforestation country. This is contentious. The forest groups in India have said all along that the loss of dense to moderately dense forests within the recorded forest area is being hidden under the garb of increasing forest and tree cover. The first enumeration of forest and tree cover in India was covered by the State of Forest Report 2001. According to this report, forest cover has been taken as comprising all lands more than one hectare in area, with a canopy density of more than 10 per cent, irrespective of land use and ownership. All perennial woody vegetation (including bamboos, palms, coconut, apple, mango, neem, peepal, etc.) has been treated as tree in the report. Thus, all lands with tree crops, such as agro forestry plantations, fruit orchards, tea and coffee estates with trees, etc. have been included as forest cover since 2001.

The 2003 assessment reveals an overall increase of 2,795 km^2 or 0.41% in forest cover across the country. But there is a decrease in dense forest cover to the tune of 26,245 km^2 (6.30%) and the open forest cover has increased by 29,040 km^2 (11.22 %). Moreover, because satellite data is still treated as 'classified' in the country, and 'ground-truthing' (if any) is carried out in a similarly clandestine manner, it is difficult if not impossible to verify exactly how much natural forest is vanishing every year, and where from. However, from the State of Forests reports, it can be seen that degradation of forests is not confined to any particular province or region, but is happening, almost uniformly, throughout the country.

The incremental increase in forest and tree cover is also due to industrial plantations both on degraded forests and non-forest land, and compensatory afforestation programmes to compensate diversion of recorded forest land for development projects. According to the information collected from the Ministry of Environment and Forests by an NGO Kalpavriksh (through the Right to Information Act) between 1980 and 2007, 1,140,177 ha of forest land were diverted for non-forest purposes. Out of this a whopping 311,220 ha were cleared recently between 2003 and 2007.

According to the National Forest Commission in 2006, about 41% of the country's forest cover has already been degraded and dense forests are losing their crown density and productivity continuously. At present, 70% of forests have no natural regeneration and 55% are prone to fire.

India's conservation regime as it is implemented through a set of Protected Areas (PAs) has also been extremely controversial, displacing and violating the basic human rights of the forest people. There is little basic data of the number of forest dwellers being displaced by the PAs or practically imprisoned in them without basic amenities and rights over NTFP, fuel wood or fodder. The National Forest Commission (2006) indicates that an estimate of around 4 million are imprisoned within the Indian PAs.

Large scale displacement of forest people and loss of usufruct rights have been reported in the National Parks of Tawa, Nagarhole, Pench, Kanha, Buxa, Palamau, Rajaji, and Tadoba and scores of Wildlife sanctuaries during the last 35 years. The GEF funded India Eco-Development Project, which emphasized conservation by reducing dependence of forest communities on forests, itself contributed to the displacement of more than 200 villages in the NPs of Nagarhole, Pench, Kanha and Buxa.[77]

India is therefore, claiming financial incentives for a forest management regime that displaces and violates the rights of forest people, continues to divert large tracts of forests, often dense to moderately dense, and then replaces it with industrial, monoculture plantations.

Conclusions and recommendations

The REDD text agreed in COP-13 in Bali did not include the rights of the indigenous people who are living in the forests in the tribal and hill districts. These forests include unclassed forests, community conservation areas managed and controlled by the communities. It is the forest communities who have continued to conserve and preserve the pristine forests of the north east, Khutkatti areas of Jharkhand, forests under Van Panchayats in Uttarakhand or the community conserved forests of Orissa. The forest departments have no role. Yet, when it comes to claiming the incentives, REDD will

[77] Data compiled by the author from various sources.

provide financial incentives only to the national government. The REDD text does not include any mechanism whereby the incentives could be shared by the forest communities or benefit them.

Considering the legacy of the forest bureaucracy in this country, the absolute power that they enjoy over forests and its resources, the landlord-like attitude that is reflected in its relationship with the forest people, it is difficult to imagine that the incentive from REDD will be passed on to the forest communities.

Take for example the afforestation funds collected from industry for the diversion of forest lands and the Net Present Value (NPV) levied per ha of forest land diverted, as directed by the Supreme Court since 2003-2004. The Compensatory Afforestation Management and Planning Authority (CAMPA) was created to deal with funds collected through both NPV and compensatory afforestation schemes. Today this fund has risen to a whopping Rs.112000 million and remains unused. The MoEF has decided to disburse this amount to States for greening India – to increase tree and forest cover rather than forest regeneration. In July 2009, the government decided to release Rs.50000 million to the States for the next five years for afforestation and increase of tree and forest cover. There is no mention of any mechanism to compensate the forest communities whose land have been diverted or acquired, from this fund. This huge sum under CAMPA was primarily collected from the heavily forested regions of Orissa, Andhra Pradesh, Chhattisgarh, Madhya Pradesh and the north eastern part of the country where sizable tracts of forest land are traditionally owned by the communities and individuals.

Things have become more complex with the enactment of the Forest Rights Act, 2006. Large tracts of forests in India will legally come under community governance. How will REDD recognize the legally binding rights of the forest communities, and their contribution to conservation and sustainable management of forests and biodiversity? Who can then claim the incentives for reducing deforestation and degradation? Will REDD undermine the community conservation efforts and rights of the forest communities and strengthen a centralized form of forest governance practiced by countries like India, eroding the recent gains that forest communities have snatched at a great cost? Will REDD be the nemesis for the Forest Rights Act, 2006 in India?

In all likelihood it seems that REDD and other forest-related funds will only promote an artificial greening of the country, whilst increasing the financial clout of the forest bureaucracy and thereby undermining the rights and entitlements of the forest people. The way things are currently moving in the forest sector in India, market or fund-based financial mechanisms like REDD may tend to act as a disincentive towards the decentralization of forest governance. The majority of the forest people in India have already shifted to areas which are of less intrinsic value and considered uneconomic. REDD could be the final straw for forest dependent communities, if both the state and private sector actors are then tempted to stake their claims to these ‘uneconomic’ areas.



Dense, community controlled and governed forest in Dibang Valley of Arunachal Pradesh, north east India. Photo - Souparna Lahiri.

It seems that the emergence of a REDD fund in India is unlikely to lead to the conservation of natural old growth forests, or regeneration of forests, or improvements for the life and livelihood of the forest people. The commodification of India’s forests may well be completed, at the cost of its protectors – the forest people and forest communities.